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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/644,130

08/20/2003

Anatoly Gosis

14100 (6365/89516)

5322

44986

7590

07/31/2006

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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/644,130

Applicant(s)

GOSIS ET AL.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006 & 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060626</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gosis et al (US 6,896,174) in view of Boitel (fig. 1 emb). Gosis et al discloses all structure of the claimed configuration except formation of a length of one of the second closure panels about equal to a length of the main body portion. Boitel teaches that it is known to make closure panels (9, 19) with an overlap adjacent one end (18) of the container and with one of the closure panels (9) with a length about equal to a length of a main body portion (1, 6, 7). It would have been obvious to make the length of the closure panels in Gosis et al with lengths as taught by Boitel to provide a stronger seam along the top of the container and to allow a continuous top to be formed.
3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over France '404 in view of any one of Koehler, Cornell et al or Himmelreich. France '404 discloses all structure of the claimed configuration except formation of the configuration as a rigid unit. Each of Koehler, Cornell et al and Himmelreich teaches that it is known to make a container unit from rigid material with folds formed between the rigid sections. It would have been obvious to make the container of France '404 as a rigid unit as taught by any one of Koehler, Cornell et al or Himmelreich to provide a stronger container with less change of damage during use. It is noted that the container unit of France '404 is considered to be "preformed" insofar as it is formed from a blank and

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certain sections are folded upwardly prior to final completion of the container. Also, note is made that the length of the panels (3) in France '404 are about equal to the length of the main body portion (1) as claimed.

***Response to Arguments***

4. Applicant's arguments filed 24 April 2006 have been fully considered but they are not persuasive.

The terminal disclaimer filed 24 April 2006 has been approved. The double patenting rejection is therefor withdrawn.

The 35 USC 103 rejection set forth in paragraph 2 above is maintained insofar as the response and terminal disclaimer do not overcome the rejection. The commonly assigned patent as set forth above forms the basis for a rejection of the noted claims under 35 U.S.C. 103(a) since the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions have not been established as being commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter. A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned patent as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004. See MPEP 706.02(l)(3) with regard to the procedure for establishing that the inventions were commonly owned at the time the invention in this application was made.

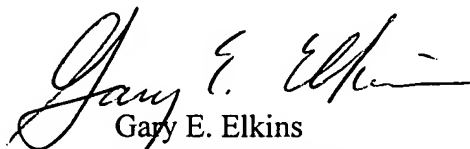
With respect to the rejection of claim 6 over France '404 in view of any one of Koehler, Cornell et al or Himelreich, the remarks assert that (1) the container in each of the secondary references is not formed from a single piece of material or a single unit and (2) France '404 does not disclose a container having the structural integrity of the claimed invention insofar as it includes many more fold lines and is not formed from a pre-formed unit having a U-shaped cross-section where the side walls of the U-shape are not bendable relative to the bottom wall.

In response, the configuration claimed is defined as being "for a single-piece container" in the preamble. The claim fails to define that the container is formed from a single piece of material as is being argued. The containers in Koehler, Cornell et al and Himelreich each disclose a formation using rigid permanently secured sections which are folded to form a container. The secondary references are considered to be suggestive of forming the container in France '404 using such rigid materials and folded sections. The fact that the France '404 container includes foldlines and is not formed as a rigid unit is considered immaterial with respect to whether one of ordinary skill in this art, having knowledge of all the prior art, would have found it obvious to make the France '404 container in such a manner. With respect to the assertion that the side walls (6) of the U-shaped section (6, 1, 6 in the folded position) in modified France '404 are formed by bending relative to the bottom (1), nothing within the claim defines such a lack of bendability. The terms "preformed" and "rigid" as describing the unit are not considered to necessarily limit the claim to the U-shaped unit lacking folds or being unbendable during formation.

*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
23 July 2006